

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

HECTOR GUERRA FION,

Plaintiff,

vs.

WALT WELLS,

Defendant.

Case No. 2:08-cv-00036-PMP-GWF

**FINDINGS AND  
RECOMMENDATIONS**

On January 10, 2008, Plaintiff submitted an Application to Proceed *In Forma Pauperis* (#1). However, the Court was unable to determine whether Plaintiff could proceed *in forma pauperis* as a result of Plaintiff not submitting a completed financial certificate. On February 4, 2008, the Court issued Order (#3), which directed the Clerk of the Court to send Plaintiff the approved form for an Application to Proceed *In Forma Pauperis* by a prisoner, as well as the document "Information and Instructions for Filing a Motion to Proceed *In Forma Pauperis*." Furthermore, the Court directed Plaintiff to submit a completed and signed application within thirty (30) days from the date Order (#3) was entered. To date, Plaintiff has not complied with Court Order (#3) within the allotted time period, and the time allowed has expired. Accordingly,

**IT IS HEREBY RECOMMENDED** that this action should be **dismissed** without prejudice based on Plaintiff's failure to either pay the appropriate filing fee of \$350.00, or submit a completed application and affidavit in support of a request to proceed *in forma pauperis*.

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**NOTICE**

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within ten (10) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 13th day of March, 2008.

  
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**GEORGE FOLEY, JR.**  
**UNITED STATES MAGISTRATE JUDGE**